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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,253	08/31/2006	Paolo Fontanazzi	1034170-000032	9285

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BUCHANAN, INGERSOLL & ROONEY PC  
POST OFFICE BOX 1404  
ALEXANDRIA, VA 22313-1404

EXAMINER
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ELKINS, GARY E

ART UNIT	PAPER NUMBER
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3782

NOTIFICATION DATE	DELIVERY MODE
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03/18/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com  
offserv@bipc.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/591,253	<b>Applicant(s)</b> FONTANAZZI, PAOLO	
	<b>Examiner</b> Gary E. Elkins	<b>Art Unit</b> 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 5-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 11-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>20060831, 20061115</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group I, claims 1-4 and 11-16 in the reply filed on 22 January 2010 is acknowledged. The traversal is on the ground(s) that the search for each Group would likely be the same and therefor examination of both Groups would not constitute serious burden. This is not found persuasive because the search for each Group is not the same and the search for the product would not extend into the method classes 493 or 53.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 5-10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 22 January 2010.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4 and 11-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Palm (WO 03/006327) (figs 1-5 emb). Palm discloses a gable top package and sheet material blank with sloping top walls (10, 11) joined together at a top transversal seal (12) and a pair of top side walls (15, 16) as claimed. The top walls are formed by panels which are formed by rotating the panels as rigid bodies around the respective fold lines. It is noted with respect to claims 14-16

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that the recited mental method steps of using formulas to determine the angles and lengths of the crease lines in the top walls do not define the sheet material being claimed over the sheet material blank in Palm. The patentability of a product is not dependent upon the intended method of manufacture. No distinction is seen between the product being claimed and that shown in Palm.

### ***Conclusion***

The remaining cited prior art is illustrative of the general state of the art.

Any inquiry related this office action or any other office action for this application should be directed to Examiner Gary Elkins at the number listed below. Normal work days are Mon, Wed and Fri.

If the Examiner is unavailable and you need to talk to someone sooner, the Examiner's supervisor, Mr. Nathan Newhouse may be contacted at the number listed below.

Information regarding the status of an application may also be obtained by accessing the PAIR system. Information about the PAIR system can be obtained at the website <http://pair-direct.uspto.gov> or by contacting the Electronic Business Center (EBC) at (866) 217-9197 (toll free). You may also contact a USPTO Customer Service Representative or access the automated information system at 1-800-786-9199 (in USA or Canada) or 1-571-272-1000.

/Gary E. Elkins/

Primary Examiner, Art Unit 3782

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